SUMMARY OF COMMENTS DURING THE 15-DAY PUBLIC AND THE BOARD'S RESPONSES

I.

Introduction

The State Personnel Board (Board) proposes to adopt, amend, and repeal sections 151.5 et seq. of Title 2, Chapter 1, of the Code of Regulations (CCR). A 45-day public comment period on this rulemaking action was held from August 3, 2018, through September 17, 2018. A public hearing was held on September 20, 2018. On May 16, 2019, the Board posted the modified text along with a notice of a 15-day public comment period. The public comment period for the modified text was from May 17, 2019 through May 31, 2019. The comments received during the 15-day public comment period were taken under submission and considered. A summary of those comments and the Board's responses are below.

II.

Summary of Written Comments from Anne Kerri, California State Lands Commission (SLC).

Comment 1:

Proposed § 249.1(b) (Advertising for Job Vacancies).

SLC asks what is meant by "advance" notice in the first sentence of subdivision (b). SLC also asks whether departments would be required to release a job opportunity bulletin about a future job bulletin seven days before it is actually released to the public and, if so whether they are releasing the job bulletin or just information. SLC also asks how the notice is to be posted during the seven-day period (paper or electronic).

Response 1:

The intent of subdivision (b) is to notify eligible departmental employees of job opportunities within the organization. The notification does not need to be in advance of the public notification. Additionally, departments may use any appropriate means of notification. For clarity, subdivision (b) has been further amended.

Comment 2:

Proposed § 249.1.1(a)(7) (Job Announcements).

Regarding proposed subdivision (7), SLC states that, when a position is created in ECOS (Exam and Cert Online System), so it can be posted on www.jobs.ca.gov, ECOS requires departments to post an internal cut-off date for "until filled" job announcements, but this internal date cannot be seen on the job announcement viewable to the public. SLC asks how departments are to show this cut-off date on the job announcement if the ECOS is not designed to show this information.

Response 2:

While the Board sets the policy and rules for civil service examinations, CalHR administers the functions and features of the ECOS. Therefore, SLC's question should be addressed to CalHR.

Comment 3:

Proposed § 249.8 (Holds on Employees).

Regarding proposed subdivision (a), SLC asks whether "voluntary transfer" covers employees that are making a transfer where their salary could increase. SLC notes that promotions are considered to be when an employee moves into a position where the maximum salary of the class is two steps or more above an employee's last or highest A01 appointment maximum salary. SLC is concerned that this language would allow departments to hold employees for an additional two weeks due to this proposed change, which is a disadvantage to the employee and may create a financial hardship.

Response 3:

The purpose of subdivision (a) is to restrict holds on employees transferring to a different job to no more than 30 days, which is consistent with current section 425, not to define "transfer". The definition of "transfer" is defined in other provisions of these regulations.

III.

Summary of Written Comments from Elise Montrose, Chief, Human Resources Branch, Department of Motor Vehicles (DMV).

Comment 1:

Proposed § 249.1(b) (Advertising for Job Vacancies).

1. This provision unfairly benefits current departmental employees over non-departmental employees.

2. This provision delays the hiring process by at least 7 days due to the requirement of advance job posting at worksites for at least 7 days. Any delays in the hiring process negatively impacts the department's ability to perform its functions and to offer superior customer service to the public.

3. This provision adds another layer of work to an already cumbersome process. Some departments only use the CalHR ECOS system to advertise job postings at www.calcareers.ca.gov. This section requires these departments to create an alternative way of advertising its vacancies to comply.

Response 1:

1. Please see Comment Section II, Response 1.

2. Please see Comment Section II, Response 1.

3. Please see Comment Section II, Response 1. The intent behind subdivision (b) is to inform current employees of other job opportunities within their own department, not require departments to create new ways of advertising vacancies. The appointing authority has discretion to determine the most effective method of notification and can be as simple as a bulletin board or all staff email.

Comment 2:

Proposed § 249.1.1(a)(7) (Job Announcements).

DMV believes this provision lacks guidance on the length of time the cutoff date must be advertised and suggests requiring advertisement of a specific cutoff date for a minimum period of ten calendar days, which is consistent with section 249.2. This requirement would prevent departments from advertising a cutoff date on the same date or less than nine calendar days, which is unfair to potential applicants.

Response 2:

Section 249.2 sets forth the minimum time period for online job announcements, which would apply to postings advertised as "until filled." However, for clarity purposes, subdivision (a)(7) has been further amended to state that the requirements of section 249.2 apply.

IV.

Summary of Written Comments from Natalie Miller, Section Chief, Office of Workforce Planning, California Department of Corrections and Rehabilitation (CDCR).

Comment 1:

Proposed § 170 (Civil Service Examinations and Announcements).

1. Regarding subdivision (b)(1), some departments do not schedule testing locations until applications have been received and proposed, based on need and availability. Is putting "Examination locations will be scheduled throughout the state of California" acceptable?

2. Regarding subdivision (b)(2):

   a. Does this allow departments the flexibility to establish additional cut-off dates without advertising them on the exam bulletin? For example, monthly cut-off dates are established on the first of every month; however, the department holds a recruitment event on the 15th of the month and establishes the 15th as an additional cut-off date without advertising on the exam bulletin.

   b. Does this require departments to include specific cut-off dates, or is it sufficient to state that the cut-off dates are established on a monthly basis?

   c. When establishing new/additional cut-off dates, does the department need to adhere to the 10-day minimum posting requirement?

Response 1:

1. Government Code section 18933 requires that examination announcements include the date and "place" of the examination. Subdivision (b)(1) of proposed section170 reiterates this requirement. However, for clarity purposes, the subdivision (b)(1) has been further amended to require that the examination announcement include the date and city or cities.

2a. No. Cut-off dates must be advertised on the exam bulletin. The intent is to notify the exam applicants of the deadline for filing the application.

2b. Specific cut-off dates must be advertised on the exam bulletin. The intent is to notify the exam applicants of the deadline for filing the application.

2c. This rule does not address the required length of time that an examination bulletin must be posted. Cut-off dates in continuous filing examination bulletins should follow the same length of time rules required of examination bulletins with one specified final filing date. See Rule 249.2.

Comment 2:

Proposed § 249.1(b) (Advertising for Job Vacancies).

1. Does “posted” mean a hard copy of the job posting?

2. Clarify what “worksites of eligible departmental employees” means.

Response 2:

1. See Comment Section II, Response 1.

2. See Comment Section II, Response 1.

Comment 3:

Proposed § 249.1.1(c) (Job Announcements).

CDCR requests clarification as to whether an employee who has received a permanent Appointment from limited-term needs to be in a reachable rank on the certification list and whether or not reemployment and SROA candidates are considered.

Response 3:

Only eligible employees would be able to convert from a limited-term appointment to a permanent appointment. Whether reemployment or SROA applies upon the conversion from a limited-term to a permanent appointment would depend upon whether a new selection process is required. For clarity, this regulation has been amended to state that the limited-term employee may be appointed to the position as a permanent civil service employee without a new selection process provided that the employee was eligible for permanent appointment either at the time of the limited-term appointment or at the time of conversion and SROA and Reemployment for the permanent appointment were cleared either at the time of the limited-term appointment or at the time of conversion.

Comment 4:

Proposed § 249.1.3(a)(1) (Timely Filing of Job Applications).

Based on SPB’s intention for candidates to use the United States Postal Service to submit their applications if they are going to mail them in, does this mean that if an application is submitted via another carrier service (e.g., FedEX, UPS, Golden State Overnight) and the application is mailed BEFORE the Final Filing Date and has a tracking number that proves this but it is not received until AFTER the Final Filing Date, we are not allowed to accept it since it does NOT meet the criteria listed above (i.e., have a postmark from the United States Postal Service)?

Response 4:

This proposed rule has been changed to permit applications to be submitted using any mail delivery service provided that the applicant can provide proof of that the application was timely deposited with the mail service.

Comment 5:

Proposed § 249.8 (Holds on Employees).

CDCR states that it is concerned that allowing departments to hold employees for up to 14 days on a promotion is not in the best interest of the employee as it negatively impacts salary, benefits, and possibly a qualifying pay period.

Response 5:
Two weeks has long been the standard notice period for an employee resigning from a job, and has been the practice in civil service for employees promoting to another job. The parties can negotiate a shorter period, if appropriate.

Comment 6:

Proposed § 280.1 (Written Justification for Limited-term Appointments).

Excluding LEAP appointments, does this include T&D assignments and anything with a limited-term tenure?

Response 6:

Proposed section 280.1 applies to limited-term appointments only.

Comment 7:

Proposed § 427 (Salary Calculations and Comparisons).

Please clarify. Does this mean that an employee's current classification is what will be used to determine transfer eligibility, instead of the employee's highest A01 appointment?

Response 7:

Language has been modified to comply with current practice.

Comment 8:

Deletion of § 432 (Class Series).

Does removing this mean that you may transfer within a class series as long as it is not rank-and-file to supervisor or supervisor to manager?

Response 8:

The language in current section 432 had been moved to proposed section 425, subdivision (a)(7). This section has since been resequenced to 425 subdivision (g).

Comment 9:

Proposed § 439.4 (Completion of a Training and Development Assignment).

1. Please clarify if an employee who is completing the T&D Assignment and receiving an appointment needs to be in a reachable rank on the Certification list and whether or not Reemployment and SROA candidates are considered.

2. Can the experience gained in the T&D assignment be utilized for promotional opportunities as well as the same position in which he or she served the training and development?

Response 9:

1. If the appointment is by list appointment, the employee must be in a reachable rank to be eligible for appointment. Reemployment and SROA apply and must be cleared either at the time of the T&D selection or at the time of the permanent appointment. (See 249.1.1(c).)

2. Yes. Proposed section 439.4, subdivision (d) has been modified to clarify that the experience and training earned in the training and development assignment may be used by the employee to satisfy minimum qualifications.

V.

Summary of Written Comments from Betty Saeteun, Assistant Human Resources Chief, California Department of Consumer Affairs (DCA).

Comment 1:

Proposed § 174 (Applications for Civil Service Examinations).

DCA asks what method of communication is required to inform the candidate that they will be receiving electronic communication in the future? A letter by mail, a phone call, or will a statement on the bulletin suffice?

Response 1:

Proposed subdivision (b)(2) requires the appointing authority to use electronic communication to contact an applicant who submits an examination application online, unless the applicant specifically requests otherwise. Proposed subdivision (b)(3) pertains more specifically to communications containing information about employment inquiry notifications and scores and ranks. Therefore, unless the applicant indicates otherwise, the appointing authority should use electronic communication to inform the candidate that he or she will be provided with employment inquiry notifications, scores and ranks electronically. These requirements are currently contained in Government Code section 18934, subdivision (b).

VI.

Summary of Written Comments from Darci Haesche, Chief, Human Resources Branch, Department of Health Care Services (DHCS).

Comment 1:

Proposed § 249.1(b) (Advertising for Vacancies).

Is the intent of this section to require that job opportunities must be posted at worksites for seven days before being publically announced for a minimum of ten calendar days (§ 249.2 (b))? If so, this increases the recruitment period significantly.

Response 1:

This proposed rule has been further modified. Please see Comment Section II, Response 1.

Comment 2:

Proposed § 249.1.1 (Job Announcements).

DHCS asks whether, if a position is advertised as “limited term but may become permanent,” but the position remains limited term (LT), can the incumbent’s tenure status be changed from LT to permanent? Why would the incumbent’s tenure rely on the tenure of the position? The appointment would be based on permanent list eligibility, permanent transfer eligibility, etc., not the funding of the position. It’s not prohibited to fill permanent in LT positions. Therefore, the language needs to be further clarified that the incumbent can be appointed perm regardless of the position tenure.

[Ex. If the intent of the job announcement is to fill perm in an LT position, the job is advertised as perm and a perm cert is ordered, regardless of the LT tenure. This makes sense for retention and training of an employee, wherein the LT funding may be approved for four (4) years, but appointment is only allowed for a maximum of two (2) years. After a two year LT appointment, the Department would have to re-advertise, re-hire, re-train another employee. If the Department appointed perm to the four (4) LT position, they could retain the employee for the life of the position. Additionally, in these cases, the Department is aware that if the funding expires and is not extended, the Department must find an appropriate placement for the perm employee. For a moderate to large size department with several vacancies, this is doable in many cases, especially in rank and file classes.]

Response 2:

This proposed section is intended to clarify that a new selection process is not required when converting a limited-term appointment to a permanent appointment, provided that the job announcement for the limited-term appointment specified that the appointment could potentially be converted to a permanent appointment. The section has been further modified to clarify "appointments" rather than position allocations.

Comment 3

Proposed § 249.8(c) (Holds On Employee).

DHCS recommends changing this section to provide for written notice by email without agreement from both parties, to avoid disagreement between the current and hiring appointing powers. Thus, DHCS recommends changing the language as follows: "For purposes of this rule, "written notice" may be made by way of e-mail from the hiring agency's designee to the appointing power's designee."

Response 3:

Subdivision (c) has been modified accordingly.

Comment 4:

Proposed § 439.1 (Eligibility for Appointment to a Training and Development Assignment).

Current practice is to ensure both the "current" and "proposed" appointing powers approve the T&D. The current appointing power should at least be notified that the employee is taking a T&D so they can plan for the possibility of a mandatory right of return that could occur within a two-year period (i.e., appoint LT or T&D behind the employee). Can there at least be a requirement to require notification to the current appointing power?

Response 4:

The proposed section has been modified accordingly.

Comment 5:

Proposed § 439.2 (Training and Development Classification).

The intent of a T&D is to gain the knowledge, skills, and abilities (KSAs) for appointment to a different class and outside the current occupational area. If an employee is competitive in a selection process, shouldn't the employee be appointed to the position, not a T&D? This could be used as a way to avoid a probationary period, if applicable.

Response 5:

A T&D is an assignment, not a permanent appointment. Once an employee completes a T&D and is appointed to the class, the applicable probationary period will apply.

Comment 6:

Proposed §§ 440.1, 440.2, 440.3 (Eligibility for Temporary Assignments to Meet Compelling Program or Management Needs; Advertising for Available Temporary Assignments to Meet Compelling Program or Management Needs; Hiring Process for Temporary Assignments to Meet Compelling Program or Management Needs).

DHCS is not supportive of the suggested changes to §440.1, §440.2, and §440.3. However, DHCS does agree that the CMNA should be voluntary, should be no longer than 24 months, assignment and employee's KSAs should be properly documented, employee or employer can cancel the CMNA at any time, and the employee has a mandatory right of return to their former "duties" or equivalent duties for that classification.

Response 6:

DHCS does not identify its specific concerns with proposed sections 440.1, 440.2, and 440.3. Therefore, a response is not possible.

VII.

Summary of Written Comments from Charlain Swenson, Personnel Officer, Office of Human Resources, Department of Justice (DOJ).

Comment 1:

Proposed § 174 (Applications for Civil Service Examinations).

DOJ requests that SPB revisit its proposed change to the language in section 174, subdivision (f), to allow applications to be postmarked by a service other than the U.S. Postal Service. DOJ asserts that postal services such as UPS, FedEx, and Golden State Overnight, date-stamp packages showing proof of when the candidate sent the package. In contrast, the United States Postal Service (USPS) is very inconsistent about date stamping; in fact, applications are only date stamped about 50% of the time. Based upon prior direction from CalHR, those applications are considered to be late and not timely, even though the error was on the part of USPS. Therefore, requiring applicants to use the USPS compounds a historical disservice to applicants. In addition, not all candidates live near a USPS location or may choose to use other carriers for a variety of reasons, including cost. DOJ therefore requests that the language in 174 (f)(1) be clarified to "Postmarked by a postal service" rather than requiring applications to be sent through the USPS.

Response 1:

Proposed section 174, subdivision (f), has been further modified to permit applications to be submitted using any mail delivery service that provides proof of the date of mailing.

Comment 2:

Proposed § 249.1 (Advertising For Job Vacancies).

DOJ states that it is not clear how it will provide seven days advance notice to eligible employees beyond the normal job announcement process, which allows ten days posting. It is also not clear how the department will notify eligible employees of the opportunity the first day of the posting beyond the normal 10-day posting. This implies that departments have to inform its eligible employees ahead of its normal posting procedures. This will not work with the department's current process for posting positions using ECOS. In addition, this seems to give our departmental employees an advantage over those outside the department.

DOJ asks:

1. The intent of this regulation, 249.1 (b) needs clarification. Is the SPB proposing that the posting requirements set forth is in addition to those required in 249.2?

2. If the answer to question 1 above is yes, then are departments to create their own system for notifying their employees of these opportunities outside of the ECOS job announcement system?

Response 2:

1. Proposed section 249.1 has been further modified to address these concerns. See Comment Section II, Response 1.

2. Proposed section 249.1 has been further modified to address these concerns. See Comment Section II, Response 1.

VIII.

Summary of Written Comments from Eraina Ortega, Director, California Department of Human Resources (CalHR).

CalHR identifies four overarching issues of concern:

1. Changing standard practice in application evaluation: CalHR objects to proposed changes (e.g., proposed sections 174(d) and 249.1.2(d)) that would allow for employment history to be submitted on resumes unless CalHR or the designated appointing power specifically state that the requirement of employment history must be identified on the application form and clearly list the direction in the instructions. CalHR asserts that the use of the state application (STD 678) is a longstanding historical practice that allows for consistent instruction and identification of critical components for evaluating whether or not individuals meet the minimum qualifications for an exam or position. Allowing use of a resume could disadvantage applicants who fail to include all information on their resumes and mislead appointing powers as to the nature of the positions identified. Additionally, it does not ensure that all applicants are providing the same information. CalHR believes this regulation change is inappropriate and unnecessary as the ECOS system allows for applicants to submit a resume.

2. Regulations are being added without clear intent: CalHR agrees for the need to expand recruitment strategies but has concerns with the approach stated in proposed section 249.1.2(d). CalHR also believes section 436 lacks intent and requires clarification.

3. The proposed regulations are inconsistent with current practice which allows probationary employees the ability to transfer: CalHR does not elaborate on this, other than as set forth in the detailed comments below.

4. Training and Development Assignment revisions will significantly impact state service: CalHR asserts that the proposed changes will create significant workload for all departments and upend the current process for recruitment and advertising for positions.

In addition, CalHR provided the following detailed comments regarding specified sections:

Comment 1:

Proposed § 151.5 (Limited Term Eligible Lists).

The current/proposed regulation does not state that, prior to a limited-term employee becoming permanent, the employee must be certified from a permanent certification list in compliance with the certification rules. This should be stated to alleviate confusion for HR staff.

Response 1:

For purposes of clarity, proposed sections 151.5 and 249.1.1 have been modified to require permanent appointment eligibility prior to converting an employee to a permanent appointment from a limited-term appointment.

Proposed § 249.1 (Advertising For Job Vacancies).

Proposed §§ 170(c), (d); 174(a), (f)(1); 249.1.1(b), (d); 249.1.2(a) (Civil Service Examinations and Announcements; Application for Civil Service Examinations; Job Announcements; Job Applications)

Comment 2:

Applicants should not be restricted to U.S. mail if applying by mail. How will applicants know this is a requirement? Why not allow UPS/FedEx or any other mail service the applicant chooses? The terminology used is also inconsistent, i.e., "U.S. Mail" in section 170 and "United States Postal Service" in section 174(f)(1). CalHR recommends removing "U.S." from "U.S. mail."

Response 2:

These proposed sections have been further modified to permit applications to be submitted using a parcel delivery or courier service that provides proof of the date of deposit.

Comment 3:

Proposed § 174(d) (Applications for Civil Service Examinations)

While resumes are an optional requirement for job postings, the change to allow employment history to be submitted on a resume instead of the STD 678 will cause significant problems when trying to determine if an applicant meets the minimum qualifications for examinations and appointments. The STD 678 has fields requiring an explanation of the duties being performed at each position whereas the resume is an unformatted and undirected document at the discretion of the applicant and is generally too broad to evaluate duties performed.

Response 3:

It is not the intent of this regulation to either encourage or discourage the use of the STD 678 for employment history; rather, the intent is simply to inform the applicant of any filing requirements. However, for clarity purposes, subdivision (d) has been modified to state that if the application instructions do not include such a requirement, an applicant who submits a resume in lieu of providing employment history on the STD 678 must be provided the opportunity to submit a completed STD 678 prior to disqualification, provided the original application was timely filed.

Comment 4:

Proposed § 249 (Standard Measurement Criteria)

It is important to require the standard measurement criteria be developed prior to the hiring process, so it is fair and nonbiased. This criteria should then be used and applied fairly to all applicants. The SPB has ruled that lack of established standard measurement criteria used during evaluation may be cause for the hiring process to be deemed non-compliant with the merit principles.

Response 4:

The Board distinguishes between the examination process and the hiring process. While standard measurement criteria for an examination must be developed prior to the beginning of the examination, the hiring process is a more flexible stage of the selection process. The hiring process is the hiring managers' opportunity to evaluate each applicants' unique attributes to identify the most suitable candidate for the specific job at a point in time. The comparison of the candidates is done after evaluating each candidate. Hiring managers should be allowed the flexibility to tailor the measurement criteria to the applicant pool once the hiring manager has had an opportunity to evaluate each of the candidates.

Comment 5:

Proposed § 249.1 (Advertising For Job Vacancies)

1. Subdivision (a):

    a. It appears "subdivisions (c) and (d)" should be "subdivisions (d) and (e)."

    b. The second sentence may be better interpreted if stated as, "Advertising may also include any or all of the following methods for publishing or posting job announcement."

2. Subdivision (b): The term "encouraged" in the last sentence is optional and does not require departments to notify eligible department employees. Is there a

consequence to this portion of the regulation? If not, should it be removed and stated in a policy?

3. Subdivision (d): Why does the LEAP program exist if this portion of the regulation gives the Executive Officer or appointing power the ability to find effective alternatives to the advertising process to meet established affirmative action goals for disabled· individuals and upward mobility?

4. Subdivision (e):

   a. (e)(1): This currently goes against Performance Management guidance, which Cal HR provides training on. Employees who are failing to perform the functions of their job while on probation should be given counseling and corrective instruction and, if they continue to fail, should be failed on probation.

   b. (e)(1): The current regulation reads that performance problems should be resolved by moving individuals to a position where they might excel. This also may violate the merit process.

   c. (e)(3): Looks to laterally transfer individuals between classifications for upward mobility but this may inadvertently circumvent the merit process and may diminish the rights of other individuals to compete for vacancies. What is the intent?

   d. (e)(5): What is the Career Opportunity Development Program?

Response 5:

1a. The references to subdivisions “(c) and (d)” in subdivision (a) have been changed to “(d) and (e).”

1b. For purposes of clarity, the word “also” is inserted into the second sentence of subdivision (a).

2. This proposed subdivision has been further modified. See Comment Section II, Response 1.

3. Subdivision (d) has been modified to delete “or appointing power.”

4a. Subdivision (e)(1) is identical to the language contained in current section 444, subdivision (b)(2), which has been in effect since September 12, 1983. It is intended to clarify that the advertising requirements do not apply under certain circumstances. It does not address the circumstances under which a transfer or reassignment might be appropriate.

4b. See Response 4a immediately above.

4c. Subdivision (e)(3) is a modified version of the language contained in current section 444, subdivision (b)(4), which has been in effect since September 12, 1983.

4d. The Career Opportunity Development Program was part of the Welfare Reform Act of 1971. Several iterations of welfare reform have occurred since 1971, which have apparently rendered this program obsolete. Therefore, subdivision (e)(5) has been deleted.

Comment 6:

Proposed § 249.1.1(c) (Job Announcements)

The employee would still require certification from the permanent certification list prior to transitioning to a permanent position. This should be stated to alleviate confusion for HR staff.

Response 6:

This proposed subdivision has been further amended to address these concerns. See Comment Section IV, Response 3.

Comment 7:

Proposed § 249.1.2 (Job Applications)

1. Subdivision (c): Is this specific to CEAs? If an applicant has additional work history they should incorporate it to help with verifying minimum qualifications.

2. Subdivision (d): While resumes are an optional requirement for job postings, the change to allow employment history to be submitted on a resume instead of the STD 678 will cause significant problems when trying to determine if an applicant meets the minimum qualifications for examinations and appointments. The STD 678 has fields requiring an explanation of the duties being performed at each position whereas the resume is an unformatted and undirected document at the discretion of the applicant and is generally too broad to evaluate duties performed. Should cite original authority of CCR 174(d).

Response 7:

1. Subdivision (c) is not limited to CEAs; rather, it applies to all classifications.

2. It is not the intent of this regulation to either encourage or discourage the use of the STD 678 for employment history; rather, the intent is simply to inform the applicant of any filing requirements. However, for clarity purposes, subdivision (d)

has been modified to state that if the application instructions do not include such a requirement, an applicant who submits a resume in lieu of providing employment history on the STD 678 must be provided the opportunity to submit a completed STD 678 prior to disqualification, provided the original application was timely filed.

Comment 8:

Proposed § 425 (Definitions)

1. Subdivisions (a)(3) and (a)(4): Since Government Code section 18525.3 (b) states, "The appointment of an employee to a different class to which the employee satisfies the minimum qualifications and that has **substantially the same level of** duties, responsibility, and **salary** as determined by board rule", and proposed CCR 428 states, "**Classes that are substantially the same salary range or salary level shall be considered to involve substantially the same level of** duties, responsibility, and **salary for purposes of a transfer** without an examination" we recommend adding the word "deep" in front of range and class to read as follows: "Substantially the same salary range or salary level" means the maximum salary rate of the salary range of one class or, if applicable, the maximum salary rate of the alternate range of one **deep** class, is less than two steps higher than or is the same as the maximum salary rate of the salary range of another class or, if applicable, the maximum salary rate of the alternate range of another **deep** class."

2. Subdivision (a)(7): Which classification are we applying the transfer rules to? The highest A01 or the current class? Historically it has been the highest A01 appointment, unless an employee transferred into a deep classification and progressed through to a higher salary range that is 2 steps or more higher than the maximum salary of the highest A01 appointment. See PMPPM Section 315, page 315.14. We recommend defining from class as: "Current class" for transfer eligibility purposes includes the "from class" which includes any permanent list appointment or deep range placement held by an employee.

Response 8:

1. For purposes of clarity, the term “deep” has been inserted before the term “class”.

2. For purposes of clarity, subdivision (a)(7) had been further modified to add “or deep range placement held by an employee.” However, the sections have been resequenced for technical reasons so that subdivision (a)(7) is now (g).

Comment 9:

Proposed § 426(a) (Calculating the Steps of Salary Levels)

The word "salary" should be inserted for consistency purposes since it was inserted before the 1" rate in the first sentence, "One step higher is calculated by multiplying the salary rate by 1.05. One step lower is calculated by dividing the **salary** rate by 1.05."

Response 9:

For consistency, the term “salary” has been inserted before the term “rate”.

Comment 10:

Proposed § 427 (Salary Calculations and Comparisons)

1. Subdivision (a): Board items presented to the SPB currently cite the current CCR 431 as the exception for deep classes and changing this number from 431 to 427 will cause major inconsistencies and confusion. What about historic board items referencing CCR 431 and newer HR staff not knowing what the prior CCR 431 included?

2. Subdivision (b): If an employee's permanent list appointment is to a deep range of a deep class then yes, the highest range attained by the employee will be used and the salary comparison as it applies to proposed 429(a)(2)(A) would take the maximum salary of the range and compound it to determine transfer eligibility. If an employee transferred into a deep range of a deep class and is using this (PMPPM Section 315, page 315.14) as their eligibility, the employee can transfer to any other classifications where the highest range maximum or maximum salary of a non-deep class is the same or less than the salary of the highest range attained by the employee.

Response 10:

1. The renumbering will be available through the rulemaking history.

2. To be clarified through policy.

Comment 11:

Proposed § 428 (Voluntary Transfers In General)

1. Subdivision (b): See comment from 425(a)(3) and (a)(4). It is important to know that deep ranges are compared and non-deep ranges are not.

2. Subdivision (e):

    a. Contradicts proposed CCR 428(a) which states employees with permanent or probationary status can be eligible to transfer.

b. Why does 428(e) require an employee to have passed probation and attain permanent status? This goes against current practice.

c. This could theoretically cause endless transfers without needing to reexamine until CCR 435 stops the transfer. Current practice uses the employee's highest permanently tenured list appointment for transfer eligibility when comparing the rules, not current class, unless it is a deep class the employee transferred to (PMPPM Section 315, page 315.14).

Response 11:

1. See Comment Section VIII, Response 8.1.

2a. Proposed subdivision (a) has been modified to clarify that employees in state civil service with permanent or probationary status may be eligible for appointment to positions in state civil service by way of transfer, without examination, in accordance with the provisions of this Article.

2b. Proposed subdivision (e) has been removed.

2c. The purpose of these regulatory changes is to simplify the transfer rules and create flexibility by eliminating unnecessary process. If the employee meets the transfer eligibility requirements, consecutive transfers that do not result in a promotion should be permissible without examination. The employee would have established eligibility based on examination initially, which demonstrates the employee's merit and fitness for appointment at that level. There is no reason to continue to examine that same employee for an appointment in a different classification at substantially the same level. Proposed section 435 prevents consecutive transfers resulting in a promotional level.

Comment 12:

Proposed § 429 (Voluntary Transfers Between Classes)

For clarity, what classification are we using for the "from" class? The highest A01, the current class, or both (best benefit). Currently, we use the highest permanent list appointment classification or on occasion a deep range of a deep class when it meets the criteria in PMPPM Section 315, page 315.14.

Response 12:

Proposed section 425(a)(7) defined "from class" to include current class, highest permanent list appointment, or deep range placement held by an employee. This section has been resequenced to 425(g)

Comment 13:

Proposed § 430 (Appointments Not Permitted to Transfer)

430(a)(1) & (2): Recommend changing "management" to "managerial" to ensure consistency.

Response 13:

The term “management” has been changed to “managerial” for consistency.

Comment 14:

Proposed § 431 (Employees with Temporary or Limited-Term Status)

1. Subdivision (a): Change “status” to “appointment”.

2. Subdivisions (b) and (c):

    a. What is the intent of 431(b) and (c)? Transfer vs. reinstatement?

    b. Proposed CCR 428(a) states, "employees in state service with **permanent or probationary status** shall be eligible for appointment to positions in state civil service by way of transfer". Why does 431(b) restrict employees in a temporary or limited-term assignment and have other transfer eligibility limit them to only permanent status eligibility? The proposed CCR 428(a) allows permanent or probationary status.

    c. 428(d) is referenced, but should be 428(e).

Response 14:

The section has been removed.

Comment 15:

Current § 433 (Voluntary Transfers Between Classes)

CCR 433 is missing from the proposed regulation package.

Response 15:

Current section 433, subdivision (b)(3) and (4) have been added to proposed section 429.

Comment 16:

Proposed § 434 (Involuntary Transfers)

434(c) &(c)(2): What about employees with probationary status since they are given transfer eligibility in proposed CCR 428(a)?

Response 16:

Proposed section 428(a) states, “Employees in state service with permanent or probationary status shall be eligible for appointment to positions in state civil service by way of transfer, without examination, in accordance with the provisions of this Article.” Proposed section 434 is one of the sections within “**this Article,”** and therefore, sets forth the criteria for involuntary transfers. The Board believes that it would disadvantage an employee to be involuntarily transferred before the employee is allowed to complete probation.

Comment 17:

Proposed § 436 (Movement Between Alternate Ranges)

What is the intent of this regulation? Why does this need to be in a regulation?

Response 17:

Proposed rule 436 has been removed.

Comment 18:

Proposed § 437 (Definitions)

1. Subdivision (f): What is this? What are the other limitations?

2. Subdivision (h): Is it the intent of this definition that once in a temporary assignment an employee cannot take another temporary assignment for at least 12 months? Does this interfere with out-of-class assignments? Where does the 12 month threshold come from? What is the intent of limiting temporary assignments to 12 months?

Response 18:

1. Proposed rule 437 sets forth definitions applicable to temporary assignments or loans.

2. There is no intent behind proposed section 437 other than to define terms. Section 438.1, subdivision (e), prohibits consecutive temporary assignments. “Consecutive temporary assignment” is defined as a reassignment to perform the same level of

duties and responsibilities as the temporary assignment previously concluded, without regard to location or reporting structure. The proposed section does not limit temporary assignments to 12 months; rather, it requires a 12-month gap between temporary assignments. The purpose of the 12-month gap is to prevent an appointing authority from permanently placing an employee in a temporary assignment by simply renewing the temporary assignment immediately upon conclusion of the previous temporary assignment. Proposed section 438.1 sets forth the duration limitations of temporary assignments. This section does not interfere with out-of-class assignments which are under the authority of CalHR.

Comment 19:

Proposed § 438.1 (Period of Time for the Temporary Assignment or Loan)

1. Subdivision (b): We are unclear how the extension of this is to be keyed or processed with the State Controllers' Office given T&D assignments were historically limited to two years. The time-limit for T&D assignments as proposed will significantly change.

2. Subdivision (e): Is it the intent that once in a temporary assignment an employee can't take another temporary assignment for at least 12 months?

Response 19:

1. The two-year extension for temporary assignments applicable to apprenticeship programs is currently contained in Government Code section 19050.8, subdivision (c). Questions regarding the State Controller's Office processes should be directed to the State Controller's Office.

2. No. The intent is to prohibit consecutive temporary assignments to perform the same level of duties and responsibilities as the temporary assignment previously concluded. An employee would not be prohibited from taking another temporary assignment to perform a different level of duties and responsibilities.

Comment 20:

Proposed § 438.4(a)(3)(C) and (D) (Recordkeeping Requirements for Temporary Assignments or Loans)

CalHR recommends replacing the word "Certification" with "Proof, evidence, or justification".

Response 20:

Proposed section 438.4(a)(3)(C) and (D) had been further modified to change the term "certification" to "documentation." However, these sections have been resequenced for technical reasons, so that sections 438.4(a)(3)(C) and (D) are now 438.4 (c)(3) and (4).

Comment 21:

Proposed § 439 (Purpose of Training and Development Assignments)

1. Subdivision (a)(2): Typically, incumbents are provided training and counseling when deficient in their performance of duties associated with their current classification. This addition seems to speak to situations where broadening experience would be useful for a new incumbent to a classification, however, the appropriateness of this is questionable as the incumbent should be able to perform the functions of the position at time of hire as they have certified they have the KSAs to be successful on the job.

2. Subdivision (a)(3): The messaging of this seems to imply that departments can place individuals on T&D assignments to "pre-select" individuals for future promotions.

Response 21:

1. Subdivision (a)(2) restates longstanding Board policy encouraging “the use of T&D assignments to provide employees broader experiences and skills that will improve their ability to perform in their current assignments.” (See PMPPM section 340, page 340.2; revised March 1994.) Performance deficiencies should be addressed through performance management methods.

2. Subdivision (a)(3) restates longstanding Board policy encouraging “the use of T&D assignments to help prepare employees for future promotion.” (See PMPPM section 340, page 340.2; revised March 1994.)

Comment 22:

Proposed § 439.1(b) (Eligibility for Appointment to a Training and Development Assignment)

1. As departments are required to continue to "employ" an individual on loan to a different department for the purpose of training and development, prohibiting the loaning department authority on whether or not to allow for the employee to participate will cause undue hardship for the loaning department. In addition, as the departments enter into Training and Development agreements that specify the assignment can be ended at any time by any participating member, prohibiting the decision of the loaning department before an appointment is made will cause situations where an employee has accepted a T&D assignment which can be ended the day it begins if the loaning department is not supportive. This would be unfair to employees.

2. We encourage employees to *apply* for T&D assignments, but it is the losing appointing power prior approval that may be a cause of concern.

Response 22:

1. The intent of this proposed regulation is to change the current T&D assignment process, so that it is similar to the limited-term appointment process where the "from" department does not have approval authority and the employee has reinstatement rights. The reason for this change is to increase the utilization of T&Ds for career mobility purposes. When surveyed, stakeholders indicated that loaning departments are reluctant to agree to T&Ds since the employee would have reinstatement rights upon the termination of the T&D. However, CalHR makes a good point regarding the loaning department's ability to terminate the T&D. Subdivision (b) has been further modified to replace "prior approval" with "agreement" and to add notification requirements to the loaning department.

2. See above.

Comment 23:

Proposed § 439.2 (Training and Development Classification)

1. References CCR 431.1, but it does not exist in the current regulations nor this regulation package.

2. Substantially the same salary is used in consideration for transfer determination, as listed in CCR 428(b). Removing the consideration from the determination for appropriate placement in a T&D assignment not only allows individuals, otherwise unable to transfer to the classification to serve a T&D assignment and claim experience for promotion from the assignment, but also disregards the establishment of classification series, where the knowledge, skills, and abilities can be obtained in earlier classifications in the upward mobility patterns. The proposed regulations circumvent the merit system by allowing individuals otherwise ineligible to compete for high level positions, as they do not meet the patterned minimum qualifications, to be considered for appointment, and will grant them eligibility upon completion of the T&D. Based on how the regulations are proposed, an Office Assistant could accept a T&D to a Staff Services Manager Ill position, and upon serving one year, count that experience toward taking the examination and ultimately, placement into the position on a permanent basis. Again, this undermines the foundation of classification series where knowledge, skills, and abilities are built upon at different levels of classifications, attained through competitive promotional opportunities. Also, current practice in state service places applicants in the lowest classification they can transfer to, so they can gain a foundational understanding of the knowledge, skills and abilities of the series to better prepare them to accept appointments in their desired classification. Allowing applicants to serve a T&D in their desired class eliminates the opportunity for

individuals serving on T&D assignments to be provided a fair amount of time to understand not only the basic concepts of the new classification series, but also requires them to learn advanced and journey-level skills. In addition, allowing for T&D assignments in a classification's own promotional path unfairly disadvantages outside applicants who might want to compete for the position, but who are unable to meet the minimum qualifications for the position. This provides an unfair advantage to inside state service applicants, as outside applicants are required to meet the minimum qualifications for positions they are applying to. Furthermore, the proposed regulation will create an undue burden on appointing authorities reviewing applicants for positions as the proposal will require them to consider all applicants, whether they meet the minimum qualifications or not, for the purpose of a T&D. Cal HR would like to know if the SPB would permit a department to select an inside applicant for a T&D who did not meet the minimum qualifications of a position over an individual who already meets the minimum qualifications and has successfully placed on a list, and whether this would be a consideration during Merit Issue Complaints.

Response 23:

1. Subdivision (a) has been further modified to replace “431.1” with “439.1.”

2. Subdivision (a) lists four categories of classifications which would qualify for T&D assignments: 1) the employee’s current classification, but in a different position; 2) a different classification than the employee’s current classification with substantially the same salary range as the employee’s current classification; 3) a different classification with a promotional salary range; or 4) a different classification with a demotional salary range provided the assignment is not made in lieu of a more appropriate action. The Board reads CalHR’s comments to be directed at the third category of classifications with a promotional salary range. CalHR expresses concern that employees who are allowed to take T&D assignments at higher salaried classes will lack the foundation they would gain from lower classifications in the same series. CalHR asserts that allowing such a T&D would deprive the employee a fair opportunity to learn the basic concepts of the classification and require the employee to learn journey level and advanced skills. However, the purpose of the T&D is to train and develop the employee to successfully perform at the level of the classification. If the employee is not successful in the assignment, the employee or the department can terminate the assignment. Additionally, the employee would still need to take an examination for the classification and receive a score high enough to be reachable in order to be appointed. If the employee does not successfully complete the T&D or fails to develop the KSAs to successfully perform the functions of the classification, the employee will likely not score well on the exam. Furthermore, the employee would serve a probationary period once appointed to the classification. If the employee does not successfully perform during the probationary period, the employee would not attain permanent status. CalHR also expresses concern that allowing a T&D in the employee’s promotional path disadvantages external candidates who already

meet the minimum qualifications. However, all T&D assignments provide an advantage to state employees that is not similarly available to external candidates, by design. One of the purposes of T&D assignments is to grow and develop current state employees so that they can promote or change their career path. CalHR expresses concern that the proposed regulation will create an undue burden on departments by requiring them to consider all applicants for T&D assignments, even those who do not meet the minimum qualifications. The Board fails to see how this proposed regulation creates any additional burdens on departments. Nothing requires a department to provide T&D assignments when filling a position. Furthermore, current policy already allows T&D assignments for the purpose of meeting the minimum qualifications by the end of the assignment. CalHR asks whether it would be permissible for a department to select an employee who does not meet minimum qualifications to a T&D assignment rather than appointing an external candidate from a list. Provided that all applicable rules, policies and procedures are followed, departments have the discretion currently, and under the proposed section, to provide T&D opportunities to current state employees. There is no requirement that a department make a list appointment rather than a T&D assignment even though a list is available.

However, CalHR's example of an Office Assistant taking a T&D at the Staff Services Manager III level raises a good point. Allowing an employee to advance through his/her own class series through a T&D by bypassing levels in the series is not appropriate. Proposed section 439.2, subdivision (a)(3), has been further modified to add back in subdivision (a)(3)(C) to disallow a T&D in the employee's current class series unless pursuant to an Apprenticeship.

Comment 24:

Proposed § 439.3 (Selection Process for Training and Development Assignments)

1. Subdivision (a): Current practice involves interviews. Are there other mechanisms as good as interviews? Removing the interview component may disadvantage employees and create inconsistencies between departments. This may prompt union concerns.

2. Subdivision (b): When would this apply? This should be removed.

Response 24:

1. While interviews are the most commonly used selection method, appointing authorities have the discretion to use whichever method is most appropriate for identifying the best candidate for the job, whether by way of appointment or T&D. Additionally, for some applicants, such as those with certain cognitive disabilities, an interview may present a barrier to successfully competing for the job.

2. Subdivision (b) clarifies that a competitive selection process is not required when all eligible employees in the unit are given the same T&D assignment. CalHR does not identify the specific reason it recommends deleting this subdivision. The Board declines to make the change.

Comment 25:

1. Subdivision (a): Should "absolute" be included as such, "the employee shall have the absolute right to return to his or her former position". The term absolute was used proposed CCR 438.5 and in Government Code section19050.8.

2. Subdivision (d): The first sentence should end after minimum qualifications. Why do the types of exams need to be stated? What if using the experience to transfer?

3. In regards to transitioning a T&D to the position, we worked with the Selections Division and came up with an alternative that will allow the original cert to be used ensuring a cleaner process. Departments will order and work the cert ensuring they have cleared SROA and Re-employment. If a T&D hire is made, the department will keep the cert open and if/when the T&D candidate transitions to the position the department would contact CalHR requesting to extend the cert list for an additional 2 years. The employee on the T&D would need to be in a reachable rank after taking the exam and the department could then write the employee onto the existing cert. This change may require changes to CCR 250.2.

Response 25:

1. Subdivision (a) has been further amended to add the term “absolute” before the term “right”.

2. Subdivision (d) has been further amended to delete the types of examinations.

3. CalHR’s suggested modification to rule 250.2 has been added to the proposed regulations.

Comment 26:

Proposed § 440 (Temporary Assignments to Meet Compelling Program or Management Needs, in General)

1. Subdivisions (a)(2), (3) and (4): CalHR would like clarity of intent as to why current staffing levels would provide cause for a Compelling Management Needs Assignment in lieu of other recruitment or temporary staffing resolutions.

2. Subdivision (b): Can "should" be changed to "shall consider and document"? Recruitment should be required.

3. Subdivision (a)(4): In addition to the comment for 440 (a)(2), routine and daily operational needs would not constitute a sufficient justification for assigning an incumbent toward a Compelling Management Need and may create a loophole.

Response 26:

1. Proposed subdivision (a)(1)-(4) has been replaced with the language in current section 442, subdivision (b)(1) and (2).

2. Subdivision (b) has been changed to subdivision (c) and further modified to replace "should consider" with "shall consider and document." The recruitment requirements applicable to T&D's are contained in proposed section 440.2.

3. See response in (1) above.

Comment 27:

Proposed § 440.2(a) (Advertising for Available Temporary Assignments to Meet Compelling Program or Management Needs)

Please clarify the recruitment process since historically Compelling Management Needs Assignments were not advertised? How are eligible candidates determined for advertisement purposes? It is overly vague.

Response 27:

The Board feels that proposed section 440.2, subdivision (a), is sufficiently clear to allow notice to eligible candidates while providing the appointing authority the flexibility of utilizing whichever advertising method it deems most appropriate for providing fair, equitable notice. The appointing authority is in the best position to determine which candidates are eligible. The intent of the three working day advertisement is to provide notice to employees whose expertise or specialized competencies may not be known to management and open up opportunities to all eligible employees.

Comment 28:

Proposed § 440.4 (Completion of Temporary Assignments to Meet Compelling Program or Management Needs)

The first sentence should end after minimum qualifications. Why do the types of exams need to be stated? What if using the experience to transfer?

Response 28:

Proposed section 440.4 has been further amended to delete the types of examinations.

Comment 29:

Proposed § 441.2 (Temporary Assignments for Injured Employees in Different Classifications)

Does not state that injured employees can have a temporary assignment in classes that are substantially the same.

Response 29:

The proposed section applies when eligible injured employees are temporarily assigned to perform the functions and duties of a class *different than their current class*. A class that is substantially the same as the current class is still different than the current class. However, for purposes of clarity, proposed section 441.2 has been further modified to apply when "eligible injured employees are temporarily assigned to perform the functions and duties of a classification other than the one to which they are appointed."

Comment 30:

Proposed § 442 (Interjurisdictional Employee Exchange)

1. Silent on whether employees need permanent or probationary status?

2. CCR 430.4 does not currently exist nor exists in this regulation package.

Response 30:

1. Subdivision (a)(1) states that "the provisions of Article 19.1 related to training and development and compelling management needs shall apply." Section 439.1 is a provision under Article 19.1, and requires that eligibility requires permanent status in the employee's current classification. However, for purposes of clarity, proposed section 442 is further modified to require that the employee have permanent status in his or her current classification. The reference to "430.4" has been corrected to "438.4."

IX.

Conclusion

The Board appreciates the comments and feedback it received regarding these proposed regulations. The modified text with the changes clearly indicated are available to the public as stated in the Notice of Modification to Text of Proposed Regulation.